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JOHN M. AND FLORENCE E. BRYAN  
TRUST

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

In re Case No. 05-14659

Case No. C 07-2943 PJH

THE LEGACY ESTATE GROUP, LLC,  
formerly doing business as FREEMARK  
ABBEY WINERY, BYRON VINEYARD &  
WINERY, and ARROWOOD VINEYARD &  
WINERY

**TRANSCRIPT OF EVIDENTIARY  
HEARING**

Debtor

Adv. No. 06-01173

OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF THE LEGACY ESTATE  
GROUP, LLC,

Plaintiff,

v.

1 JOHN M. BRYAN, JOHN M. AND  
2 FLORENCE E. BRYAN TRUST, J.M. BRYAN  
3 FAMILY TRUST, KULWINDER SIDHU,  
4 DEVINDER SIDHU, PACIFIC PARAGON  
5 INVESTMENT FUND LTD, a British Columbia  
company, HARRY CHEW, and AIC CAPITAL  
PARTNERS, LLC, a California limited liability  
company

Defendants.

6  
7 JOHN M. BRYAN, JOHN M. AND  
8 FLORENCE E. BRYAN TRUST, J.M. BRYAN  
FAMILY TRUST,

Defendants/Cross-Claimants,

v.

11 KULWINDER SIDHU, DEVINDER SIDHU,  
12 PACIFIC PARAGON INVESTMENT FUND  
13 LTD, a British Columbia company, HARRY  
14 CHEW, AIC CAPITAL PARTNERS, LLC, a  
California limited liability company, and  
LAMINAR DIRECT CAPITAL, L.P., a Texas  
limited partnership

Defendants/Cross-Defendants.

16  
17 Attached hereto is a true and correct copy of the transcript of the Evidentiary Hearing  
18 conducted by the Bankruptcy Court on September 27, 2007 with respect to the JFB Trust's jury  
19 demand.  
20

21 Respectfully submitted,

22 DATED: October 19, 2007

NIXON PEABODY, LLP  
ST. JAMES LAW, P.C.

24  
25 By: /s/ Michael St. James  
26 Michael St. James  
27 Counsel for the JFB Trust  
28

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
(SANTA ROSA DIVISION)

In re:

THE LEGACY ESTATE GROUP, LLC,

Case No. 05-14659

Chapter 11

Santa Rosa ,California  
September 27, 2007  
10:06 a.m.

Debtor.

OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF THE LEGACY ESTATE  
GROUP, LLC,

Plaintiff,

v.

A.P. No. 06-1173

JOHN M. BRYAN, JOHN M. AND  
FLORENCE E. BRYAN TRUST,  
J.M. BRYAN FAMILY TRUST,  
KULWINDER SIDHU, DEVINDER  
SIDHU, PACIFIC PARAGON  
INVESTMENT FUND, LTD., a British  
Columbia company, HARRY CHEW,  
and AIC CAPITAL PARTNERS, LLC,  
a California limited liability  
company,

Defendants.

TRANSCRIPT OF PROCEEDINGS  
MOTION TO CERTIFY CASE TO DISTRICT COURT  
FOR JURY TRIAL

BEFORE THE HONORABLE ALAN JAROSLOVSKY  
UNITED STATES BANKRUPTCY JUDGE

1 APPEARANCES:

2

3 For the Unsecured MacCONAGHY and BARNIER  
4 Creditors' Committee: BY: JOHN H. MacCONAGHY, ESQ.  
-and-  
JEAN BARNIER, ESQ.  
5 645 First Street West #D  
6 Sonoma, California 95476

7 For John Bryan: NIXON PEABODY, LLP  
8 BY: GLENN E. WESTREICH, ESQ.  
One Embarcadero Center, 18<sup>th</sup> Floor  
9 San Francisco, California 94111

10

11 Court Recorder: KATIE ANDERSEN  
12 UNITED STATES BANKRUPTCY COURT  
99 South "E" Street  
13 Santa Rosa, California 95404

14 Transcription Service: Jo McCall  
15 Electronic Court  
Recording/Transcribing  
16 2868 E. Clifton Court  
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P R O C E E D I N G S

October 1, 2007 10:06 a.m.

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THE CLERK: The court is now in session, The Honorable Alan Jaroslovsky presiding.

THE COURT: Be seated, please.

THE CLERK: No. 2 on the 10:00 o'clock calendar, The Official Committee of Unsecured Creditors versus Bryan.

MR. MacCONAGHY: Good morning, Your Honor, John MacConaghy and Jean Barnier for the plaintiff, The Official Unsecured Creditors' Committee of the estate of The Legacy Estate Group, LLC.

MR. WESTREICH: Good morning, Your Honor, Glenn Westreich, Nixon Peabody, for John Bryan and the Bryan Trusts.

THE COURT: Well, as I understand it, there's evidence that this trust is revocable?

MR. MacCONAGHY: That is correct, Your Honor, and we're prepared to proceed accordingly.

MR. WESTREICH: Your Honor, we'll stipulate to --

THE CLERK: Counsel, you need to use one of the microphones.

MR. WESTREICH: Your Honor, we will stipulate that the John and Florence Bryan Trust, the trust at issue, is a revocable trust.

1 THE COURT: So is there any reason why I should  
2 not deny the request for a jury?

3 MR. WESTREICH: Yes, Your Honor. As we pointed  
4 out in the brief that we filed this week, a revocable trust  
5 is recognized in the State of California as a separate and  
6 distinct legal entity. All parties are entitled under the  
7 Seventh Amendment of the United States Constitution to a  
8 right to a jury.

9 The Probate Code specifically provides that there  
10 is no merger between the trust and settlor or trustee, so  
11 there's no question that it's a separate entity. It  
12 provides different rights and obligations and has its own  
13 set of rights and duties. And just as in this case, the  
14 trust was named by the plaintiff as a defendant, a separate  
15 defendant, because all of the transactions in issue with  
16 respect with the trust were entered into by the trust  
17 itself, and as in this case, in fact, a number of causes of  
18 action are stated solely against the trust --

19 THE COURT: Well, let me put it to you this way.  
20 If I wanted to avoid litigation in bankruptcy, what would  
21 keep me from creating a revocable trust just before  
22 bankruptcy or maybe even just before the hearing in front  
23 of the Bankruptcy Court?

24 MR. WESTREICH: Well, in this particular case, I  
25 think that question doesn't really apply. This trust has

1     existed since --

2                 THE COURT: So you're saying that anyone who's  
3     clever can avoid having a bankruptcy issue litigated in the  
4     Bankruptcy Court just by creating a revocable trust.

5                 MR. WESTREICH: Well, I don't see how that would  
6     avoid it, because if the trust is a party to transactions,  
7     then the trust is going to -- and if the trust submits a  
8     claim, the trust is going to be subject to Bankruptcy Court  
9     jurisdiction just like if an individual is a party to a  
10    transaction and submits a claim. You have two different  
11    entities here. It's no different than forming a  
12    partnership or a corporation.

13                THE COURT: Well --

14                MR. WESTREICH: But there's absolutely no evidence  
15    here that this trust was formed to avoid Bankruptcy Court  
16    jurisdiction.

17                THE COURT: But the point is, if you're right,  
18    anybody could avoid --

19                MR. WESTREICH: I'm not sure why that would be  
20    true. The trust, like any other entity, can submit a claim  
21    in Bankruptcy Court. Had the trust here submitted a claim  
22    in this court, we wouldn't be arguing about whether it was  
23    subject to your jurisdiction.

24                THE COURT: Well, but there are three claims here,  
25    right? And two of them have been filed.

1 MR. WESTREICH: True.

2 THE COURT: And including one by Mr. Bryan.

3 MR. WESTREICH: Correct.

4 THE COURT: And so this is the third one, so --

5 MR. WESTREICH: And it's separate and distinct  
6 from the other claims.

7 THE COURT: Yeah, I know, but you're -- look, I  
8 have to restrain myself. I understand Mr. St. James has  
9 been the attorney who's been doing this all along, but to  
10 me, this is just a big game that's being played, and I'm  
11 getting tired of playing it. I think your client is just  
12 trying to make this as expensive as possible for this  
13 matter to be litigated. I think that your client is using  
14 both proceedings in this court and the District Court to do  
15 it. And this looks to me just like another game your  
16 client is playing.

17 MR. WESTREICH: Well, Your Honor, I can assure you  
18 that there's no gamesmanship involved. What's involved is  
19 a party that has not submitted to the jurisdiction of this  
20 court, enforcing the right that the United States  
21 Constitution provides to it.

22 THE COURT: All right. Well, is there any reason  
23 why I shouldn't take the matter under submission and decide  
24 the legal issue?

25 MR. WESTREICH: I don't -- I actually agree that



1 it's purely a legal issue. I don't think the alter ego  
2 theory that's been advanced by the plaintiff has any  
3 bearing on a party's constitution rights, and there's  
4 absolutely no law that says that there's any relationship.

5 THE COURT: Well, maybe I'm going to make some.

6 MR. WESTREICH: Well, I would just ask Your Honor  
7 to carefully review the authorities. This is a  
8 constitutional issue, and I think before anyone is deprived  
9 of constitutional rights, there ought to be clear law and  
10 there's simply no law that provides for this.

11 THE COURT: I'll do my best to make some clear  
12 law.

13 MR. WESTREICH: All right. Well, thank you, Your  
14 Honor.

15 MR. MacCONAGHY: Your Honor, with illusions to  
16 constitutional issues, I'm hearing illusions to further  
17 appeals.

18 THE COURT: Well, appeal is the proper way to get  
19 this resolved. What's improper is to try to -- is to try  
20 to use the tail to wag the dog and get the rest of these  
21 matters away from me when this is clearly a dispute between  
22 a bankruptcy estate and creditors who filed claims, and  
23 it's supposed to be adjudicated here for reasons of economy  
24 and for reasons of waiver of the right to a jury. So  
25 Bankruptcy Courts have been hearing matters like this for a

1 hundred years, and the conduct of the claimants in this  
2 case, to my mind, is very close to reprehensible.

3 MR. MacCONAGHY: My point, Your Honor, is that if  
4 there is going to be further litigation in a higher court  
5 about this, we would like to make a complete factual record  
6 because there's a very definite factual dispute here.  
7 Counsel says that the John and Florence Bryan Trust is a  
8 revocable trust and thus a distinct legal entity and thus  
9 has never filed a Proof of Claim in this case, and we take  
10 great issue with that statement.

11 We are prepared -- and I can make an offer of  
12 proof to -- and we would like to call Mr. Bryan as an  
13 adverse witness to demonstrate that in fact John Bryan, to  
14 be precise, and his wife Florence own absolutely nothing.  
15 Mr. Bryan has testified in deposition that every single  
16 asset he owns is in fact an asset of the John and Florence  
17 Bryan Trust, the claimant at issue by this motion, with the  
18 exception of things that he owns in the John M. Bryan  
19 Family Trust. So we would be able to present a record  
20 today, Your Honor, that the claims are actually receivables  
21 owned by the John and Florence Bryan Trust, not Mr. Bryan,  
22 that the underlying economic interests that are being  
23 protected by these claims are not the interests of, quote,  
24 "John Bryan" per se but actually the John and Florence  
25 Bryan Revocable Trust, to be precise, exactly the same as

1 when Your Honor heard a status conference on Monday in the  
2 case of Locke versus Ingram Entertainment. You weren't  
3 adjudicating a claim for Mr. Locke even though the action  
4 was properly so captioned. You were adjudicating a claim  
5 for an estate, and these claims, I think we can demonstrate  
6 as a factual matter, were in fact filed by Mr. Bryan in his  
7 representative capacity as trustee for the John and  
8 Florence Bryan Revocable Trust. So we're prepared to  
9 present that factual record.

10 THE COURT: All right. So you're saying the facts  
11 are even stronger. I have serious doubts about whether or  
12 not a revocable trust is not bound by the Proof of Claim  
13 filed by the person with the power to revoke the trust,  
14 period. But you're saying there's additional facts, and  
15 I'll be happy to hear them if there's not a stipulation.

16 MR. WESTREICH: Well, Your Honor, everything that  
17 counsel is referring to is in the record already. It was  
18 all submitted in connection with Mr. Bryan's deposition,  
19 and I think there's no reason to call him onto the stand to  
20 put on duplicative testimony. He admitted as much in his  
21 ex parte motion that all the facts that he's relying on are  
22 already in the deposition.

23 THE COURT: Well, Mr. MacConaghy has just made an  
24 offer of proof. Do you accept it or not?

25 MR. WESTREICH: I accept the fact that -- I don't

1 accept his characterization of the fact that -- or the  
2 claim, that in making personal claims, that is, John Bryan  
3 making a claim against the bankruptcy, he was acting on  
4 behalf of the trust, but the facts which are the only  
5 things that Mr. Bryan can attest to are already -- the  
6 facts that he has substantially all of his assets in the  
7 trust or in the Family Trust are something that we would  
8 stipulate to and that Mr. Bryan already testified to and  
9 that are already before this Court in the record.

10 THE COURT: Well, Mr. MacConaghy, I'm not sure if  
11 that meets your offer of proof or not. Are you satisfied  
12 with that or do you want a further admission or do you want  
13 to call a witness? I mean factually the only thing you  
14 added to it that I could hear was that all of the assets  
15 are in the trust. That is an additional factor. Are there  
16 additional factors that you feel are important and then  
17 have they or have they not been admitted to?

18 MR. MacCONAGHY: You know, Your Honor, I think  
19 they have admitted as a general matter, and I am -- I don't  
20 need to call Mr. Bryan as a witness as a consequence, but I  
21 would like to focus on some things for argument purpose,  
22 just again, to get it on the record. And specifically, I  
23 would like to get on the record the exact deposition  
24 testimony in question, and I have placed in front of Your  
25 Honor and counsel two black binders, one that has the

1 deposition of Mr. Bryan and the second is a, quote,  
2 "Exhibit Book." The Exhibit Book has eight tabs. Seven of  
3 those tabs are actually pleadings in the cases, the Proofs  
4 of Claim and the claims docket sheet. And the eighth tab  
5 is the John and Florence Bryan Trust Agreement that I would  
6 like to move into evidence.

7 As far as the deposition testimony in question,  
8 the specific testimony that we are relying on, the most  
9 important testimony is at page 30 and 31, and there's just  
10 a few lines I would like to get into the record. Starting  
11 at page 8, my colleague said:

12 "Question: Let's now turn to the John and  
13 Florence Bryan Trust.

14 "Answer: That's a present interest trust."

15 And then there's a brief colloquy:

16 "Question: When you say it's a present interest  
17 trust, what do you mean by that, Mr. Bryan?

18 "Answer: It's a trust established by Flo and  
19 myself which essentially owns all of our assets."

20 Then on page 31, line 11:

21 "Question: What assets are in that trust?

22 "Answer: Most of our personal holdings, our  
23 stocks, our real estate.

24 "Question: Are there any personal holdings of  
25 yours and your wife that are not in the John and

1 Florence Bryan Trust?

2 "Answer: Not that I'm aware.

3 "Question: So basically everything that you and  
4 your wife own is property of the John and  
5 Florence Bryan Trust?

6 "Answer: Correct."

7 Now, if you look at the trust agreement, Your Honor, on  
8 page 1, it identifies Mr. Bryan as the -- Mr. and Mrs.  
9 Bryan as the settlors. He's the trustee. There's a co-  
10 trustee who is an accountant under his employ,  
11 approximately half time. The trust agreement on Article II  
12 says that they can revoke it, amend it, withdraw property  
13 at any time. And in Article III it says that while they're  
14 alive, they get all the income and they can consume any  
15 portion of the principal they deem fit.

16 Mr. Bryan testified that -- and that this was  
17 essentially a substitute for a Will, that's perfectly  
18 legitimate in that regard, and we don't dispute that. It's  
19 an estate planning device commonly used by millions of  
20 people.

21 Turning to the Proof of Claim that he filed in  
22 this case, or one of the Proofs of Claim, which is Exhibit  
23 5 in the book, it's a 1.5 million dollar claim -- excuse me  
24 1.3 million dollar claim filed by John M. Bryan and it's  
25 essentially a subrogation claim. The attachment to the

1 claim says, quote:

2 "John M. Bryan honored the Bryan guaranty by  
3 paying Red Barn Ranch 1.3 million dollars."

4 Well, if we combine that with the prior  
5 testimony, John M. Bryan really didn't pay the 1.3 million  
6 dollars because John M. Bryan has no money. The money was  
7 really paid by the John M. Bryan Trust. That was part of  
8 their liquid assets. That was the economic interest that  
9 was being protected by that payment, and the claim in turn  
10 was being filed on behalf of the real party in interest who  
11 made the payment, if we're going to call them separate  
12 legal entities as opposed to just an estate planning  
13 device.

14 I don't want to belabor this too much, Your  
15 Honor, but the same analysis can be used for the 20 million  
16 dollar claim filed in the Legacy case which is Claim 3 and  
17 there's another claim -- excuse me, I think I said Claim 3;  
18 it's Exhibit 3 -- I believe it's Claim 122. And then  
19 there's also this claim for Sycamore Vineyards, which is a  
20 longstanding partnership of John and Florence Bryan, which  
21 in turn owns I think the growing vines, not the underlying  
22 dirt. It's a vineyard company. But it's a partnership,  
23 and who owns that partnership? That partnership is  
24 owned -- that's one of the assets owned by the John and  
25 Florence Bryan Trust. That too is a claim by that entity

1 in this case.

2           These claims -- you know, a claim is an asset;  
3 is's an account receivable, and it's one of the assets  
4 owned by the John and Florence Bryan Trust. I want to just  
5 wrap this up with a little argument. You know, I've  
6 recently had the misfortune to have a couple of matters in  
7 State Court, and everybody works very hard there but it  
8 takes about three years to get a dispute from filing to  
9 jury trial in State Court, and a minimum jury trial is  
10 three days, on the simplest account receivable claim.

11           If this Court had to have a jury trial for  
12 everything it does, there would not be a bankruptcy that  
13 took less than 20 years to resolve. And I think both sides  
14 agree on the basic premise, which is that if one comes into  
15 this court and files a Proof of Claim, he's asked this  
16 Court to use its summary equitable powers to award him  
17 money from the bankruptcy estate without the long delays  
18 and expense of a jury trial.

19           The unbroken line of Supreme Court constitutional  
20 authority says that this comes at a cost. If in turn, the  
21 estate wants money from that person, that claimant has no  
22 right to back out and say, no, no, I really want a jury  
23 trial with all of its attendant delays and expense. The  
24 claimant has consented to the summary equitable  
25 jurisdiction of the court, the same equitable jurisdiction



1 that he sought to take advantage of.

2 I think we've demonstrated that the John and  
3 Florence Bryan Trust is actually the claimant in this case  
4 as represented by Claims 122, I think it's 145, and 126.  
5 They're set forth in the exhibit book. This is the place  
6 to try this case. It should be done by the Court, not a  
7 jury.

8 THE COURT: I'm assuming that you're asking me to  
9 admit 1 through 8 and the deposition transcript as part of  
10 the record in this matter?

11 MR. MacCONAGHY: I suppose so, Your Honor. I  
12 don't believe that I need to admit Proofs of Claim because  
13 they're already in the Court's record, but sure.

14 MR. WESTREICH: Your Honor, we have no objection.  
15 I think that Proofs of Claim are already subject to  
16 judicial notice and the deposition transcripts that Mr.  
17 MacConaghy is relying on having already been submitted.

18 THE COURT: All right. Well, we've still got the  
19 trust document, and that's No. 8, right?

20 MR. MacCONAGHY: Yeah.

21 MR. WESTREICH: And that's already in evidence,  
22 Your Honor, as an exhibit in connection with the  
23 plaintiff's briefs that were filed last week.

24 THE COURT: Okay. Well, unless you have anything  
25 you want to add to that, I'll take the matter under

1 submission.

2 MR. WESTREICH: Your Honor, just very briefly.  
3 All the points that Mr. MacConaghy just made are  
4 interesting, but none are relevant. The only relevant  
5 issue is, is a separate and distinct entity under  
6 California law entitled as a party to enforce its  
7 constitutional jury trial rights, and there's no law that  
8 says --

9 THE COURT: No, the issue is, does the waiver of  
10 the jury trial right by the person with the power to revoke  
11 the trust also waive the jury trial right for the trust?

12 MR. WESTREICH: There is no evidence, nor has any  
13 been offered that Mr. Bryan in his capacity as trustee or  
14 otherwise acting on behalf of this trust --

15 THE COURT: I didn't say that.

16 MR. WESTREICH: -- waive the jury trial right.  
17 If he --

18 THE COURT: The issue is, since he has a right to  
19 revoke the trust, is his waiver also effective as to the  
20 trust.

21 MR. WESTREICH: I don't think that there's any  
22 evidence that -- well, there's certainly no legal authority  
23 in support of the notion that the mere right to revoke a  
24 trust thereby makes the acts of the settlor or trustee in  
25 his individual capacity also the acts of the trust, just as

1 the mere right --

2 THE COURT: Aren't they treated as alter egos  
3 under California law?

4 MR. WESTREICH: Well, as we pointed out, alter ego  
5 is a theory that provides a remedy to avoid injustice, and  
6 as Justice Mosk (Phonetic) pointed out in the Messler  
7 (Phonetic) case, even where the alter ego theory is  
8 applied, it's only applied for specific purposes as for  
9 example, where an entity is used for a fraudulent purpose,  
10 the alter ego doctrine will be applied to avoid the fraud.  
11 There's no evidence here and I think counsel will stipulate  
12 that this trust was set up for purely legitimate reasons,  
13 and it was set up many, many years ago.

14 There's no evidence to support the notion that  
15 there was any intention to avoid Bankruptcy Court  
16 jurisdiction. So we're back to square one. A corporation  
17 with a sole shareholder likewise can be dissolved, just  
18 like a trust could be revoked, at the election of the  
19 shareholder. But that does not mean the corporation has no  
20 legal rights.

21 It's precisely the same situation here. And in  
22 the absence of any authority that provides that the mere  
23 right to revoke somehow turns this into a quasi entity or  
24 an entity that's entitled to less than the full panoply of  
25 constitutional rights, I think the only correct conclusion

1 is that this trust, as a separate and distinct entity has  
2 rights and can enforce them.

3 MR. MacCONAGHY: Submitted.

4 THE COURT: All right.

5 MR. WESTREICH: Thank you, Your Honor.

6 THE COURT: The parties can expect a written  
7 decision within ten days.

8 MR. MacCONAGHY: Thank you.

9 MR. WESTREICH: Thank you very much.

10 (Whereupon, the proceedings are concluded at 10:31  
11 a.m.)

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CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript from the digital sound recording of the proceedings in the above-entitled matter.

DATED: October 17, 2007 /s/ Jo McCall